

Figure 1. Services available without resale:

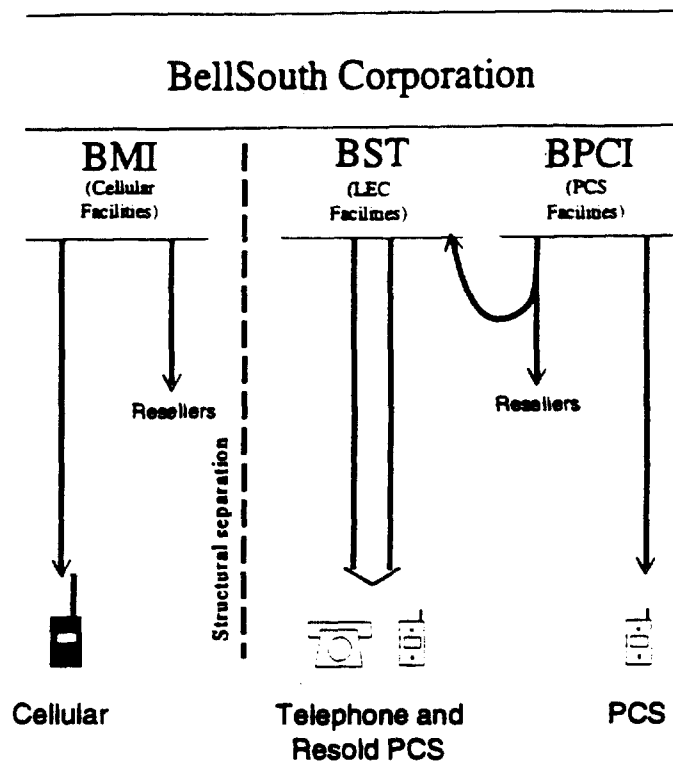
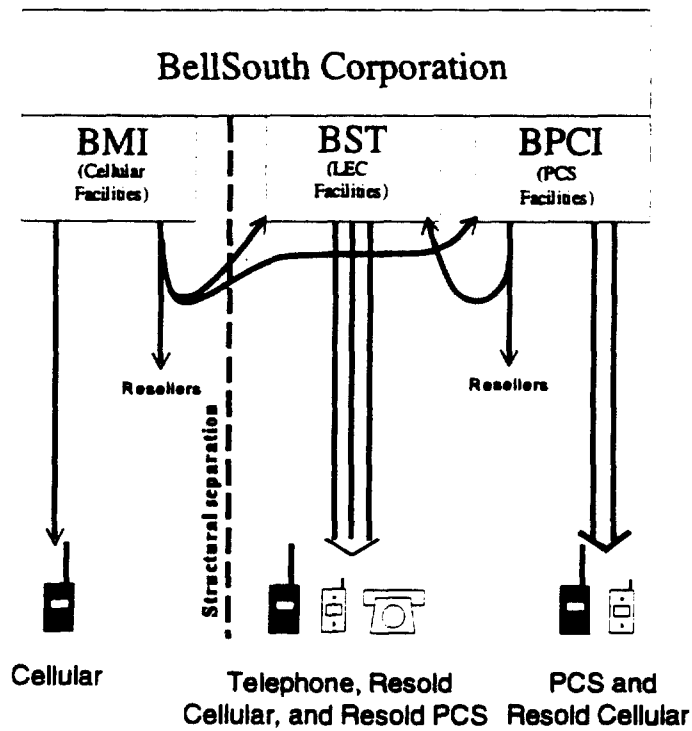


Figure 2. Services available with resale:



advantage at the expense of consumer choice should be rejected and BellSouth's Resale Request should be granted expeditiously.

Contrary to the suggestions of commenters seeking to delay competition in one-stop shopping, a rulemaking is *not* necessary, because BellSouth is not seeking to change or eviscerate the structural separation rule. The "otherwise authorized" language in the rule makes clear that a rulemaking is unnecessary to authorize exceptions to the rule where the public interest so warrants. BellSouth's Resale Request does *not* seek to change the Commission's rules or policies concerning cellular structural separation in any way.

Certain Bell Companies have filed supportive comments that also ask for resale relief.<sup>15</sup> As SBC points out, however, each individual request for waiver or other authorization must be judged on its own merits.<sup>16</sup> What is before the Commission in the instant proceeding is BellSouth's request, which is based on BellSouth's unique organizational structure, BellSouth's business plans, BellSouth's record of no cellular cross-subsidization, BellSouth's record of negotiating cellular and SMR<sup>17</sup> interconnection agreements approved by every state in its region, and BellSouth's authorization to provide PCS where it is a LEC. Other Bell Companies' situations differ and should be judged on their merits after they have filed company-specific requests for resale authorization and the public has had an opportunity for comment.<sup>18</sup> The plans and requests of other Bell Companies

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<sup>15</sup> E.g., Bell Atlantic Comments at 2; SBC Comments at 3, 9-10; USW Comments at 5.

<sup>16</sup> SBC Comments at 1.

<sup>17</sup> BellSouth offered to treat SMR interconnection in the same manner as cellular even before equal treatment of all CMRS was mandated by OBRA.

<sup>18</sup> Only BellSouth's particular proposal has been put on public notice. The other Bell Companies have not filed independent requests for authorization, but have merely filed comments on BellSouth's request.

are irrelevant to whether authorizing BellSouth to resell cellular service is in the public interest and should be granted.

BellSouth asks only to engage in the structurally unseparated resale of cellular service, which will provide it with the ability to offer wireless and wireline service on an integrated basis while preserving structural separation of cellular operations. This is a very limited, narrow request that raises none of the broad policy issues that might be relevant to a determination whether to retain or eliminate the structural separation rule. Elimination of the cellular structural separation requirement would require a rulemaking. This issue has already been addressed. In 1991, the Commission proposed to eliminate the cellular structural separation rule in its PCS docket, and in BellSouth's view, should have adopted that proposal. It did not, and the matter remains in litigation four years later.<sup>19</sup>

BellSouth's request should be granted *without delay* in order to let BellSouth provide its customers with a one-stop shopping opportunity for telecommunications services and to provide its PCS customers with cellular capability to make universal coverage available during the initial phase of system development. Other companies are rapidly instituting one-stop shopping for telecommunications service and will shortly be offering combined cellular/PCS service, and BellSouth needs to do likewise for competitive reasons. The ability to provide wireline and PCS customers with resold cellular service, through the prompt grant of the Resale Request, will avoid the delay that a rulemaking would entail. Such delays are intolerable in today's marketplace. *Relief is needed now.*

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<sup>19</sup> See *BellSouth Corporation v. FCC*, Nos. 94-4113, 95-3315 (consolidated with No. 94-3701), Brief for Petitioners (6th Cir. filed May 1, 1995). Oral argument is scheduled for October 10, 1995.

## II. Consumer and Public Interest Benefits

The Commission has repeatedly found that "one-stop shopping" for a variety of telecommunications services will serve the public interest.<sup>20</sup> As the National Consumers League points out, barring the Bell Companies from giving consumers this choice hurts consumers:

In too many markets, . . . only one of the cellular providers can now offer this option. This is because Commission rules bar Bell telephone companies from offering a competitive package deal. It is a bit as if the Government only allowed one vacation tour package, or only one department store, in each community. Customers obviously want the option of satisfying all their communications needs from one source. Many lack the time or understanding to piece together various services. . . . When one is trying to compete successfully in small business, one rarely has time to become a telecommunications marketing expert.

But having only one "package deal" source will probably mean customers will be charged a noncompetitive premium for this convenience. The solution to this challenge, of course, is to allow all cellular providers to offer a comprehensive package of services, if they choose.<sup>21</sup>

For these reasons, the consumers group described BellSouth's Resale Request as "a positive step forward . . . [a] procompetitive, proconsumer action" that would "foster competition."<sup>22</sup> It recognizes that the "Bell companies should have the same competitive flexibility that other telecommunications firms now enjoy. That would maximize both the choices available to consumers, and, as importantly, ensure competitive prices."<sup>23</sup>

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<sup>20</sup> *E.g., Craig O. McCaw*, 9 F.C.C.R. 5836, 5904 (1994), *aff'd sub nom. SBC Communications, Inc. v. FCC*, 56 F.3d 1484 (D.C. Cir. 1995).

<sup>21</sup> Consumers League Comments at 1.

<sup>22</sup> *Id.* at 2.

<sup>23</sup> *Id.*

Northern Telecom also supports BellSouth's request because it would "eliminate an artificial (and unnecessary) handicap on its ability to compete" and promote lower prices, whereas continuing to bar BellSouth from reselling cellular service in conjunction with the sale of wireline service "will likely dampen competition, to the detriment of customers."<sup>24</sup> Nortel explains:

Nortel agrees with BellSouth that the limited relief requested in its petition—the ability to offer one-stop shopping by reselling cellular service without structural separation—will enhance its ability to compete in the wired and wireless marketplace. Under its proposal, BellSouth, like its competitors (such as AT&T and GTE), will be able to offer customers the convenience of one-stop shopping. In addition, its customers will be able to enjoy the benefit of the efficiencies made possible by eliminating the current artificial structural separation that otherwise applies to reselling cellular service. BellSouth's participation under these conditions will thus lead to increased competition and lower prices, which in turn will help stimulate (and grow) the market.<sup>25</sup>

Other commenters also urged the Commission to approve BellSouth's request as a means of driving down cellular prices. For example, the United Homeowners Association noted:

There is no question that the separate subsidiary requirements add costs to cellular service which are reflected in the price charged by not only those who are subject to the requirements, but also those who compete with them. . . . [T]he removal of the requirement will make the field more price competitive . . . .<sup>26</sup>

Similarly, the Communications Workers of America also note that the "predictable result" of requiring the Bell Companies to use a structurally separated subsidiary for all provision of cellular service is "to raise cellular prices"<sup>27</sup>:

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<sup>24</sup> Nortel Comments at 1.

<sup>25</sup> *Id.* at 2 (footnote omitted).

<sup>26</sup> United Homeowners Comments at 1.

<sup>27</sup> CWA Comments at 2.

The separate subsidiary rules add costs, which are reflected in the prices that the cellular affiliates of Bell companies charge. Bell cellular affiliates all face competitors. Their cellular competitors do not bear these artificial costs. But what they typically do is raise their prices until they are just under the cost-based prices the Bell cellular affiliates charge. The competitors, in effect, "shelter" under a Commission-created pricing "umbrella." This means higher profits for the competitors. It also means higher costs to cellular subscribers.<sup>28</sup>

Allowing BellSouth to resell cellular service through BST would not eliminate the cost of maintaining a structurally separated subsidiary for its facilities-based cellular service. Nonetheless, significant economic benefits would result for BellSouth, its workers, and telecommunications consumers. As the Commission is aware, increasing competition has caused all sectors of the telecommunications industry to cut costs where possible and use resources more efficiently—including human resources. Allowing BST to resell cellular service will let BST utilize and improve upon the productivity and efficiency of its employees to promote the growth of wireless services and thereby make its employees more productive and efficient. With additional services to provide, BST will be able to preserve business office jobs, reducing the need for staff reductions. Under the Commission's cost allocation rules, the costs allocated to landline telephone service could be reduced, as well.

Grant of BellSouth's request will have another significant benefit for consumers—it will allow BellSouth's PCS unit, BPCI, to resell cellular service as well as sell PCS. In order to achieve the benefits of integrated wireline and PCS that the Commission recited in its PCS docket, BellSouth did not organize BPCI as a structurally separated subsidiary. Thus, BPCI cannot currently resell cellular service. Allowing BPCI to resell cellular service will allow its customers with dual-mode phones to use cellular and PCS interchangeably and thereby obtain ubiquitous wireless service. The

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<sup>28</sup>

*Id.*

Commission has recognized that PCS licensees need "to resell cellular service while they are building their PCS network in order to provide service to the public expeditiously" and found that such resale activities are in the public interest.<sup>29</sup> Northern Telecom agrees that the public interest will be served by granting BellSouth's request for this reason:

[T]his will allow BellSouth an opportunity to obtain and retain wireless customers that can be migrated to its PCS network as it is deployed. In this manner, BellSouth's customers need not await the deployment of BellSouth's PCS network to enjoy the manifold benefits of wireless communications. Thus, the requested relief will help ensure that BellSouth can be a vibrant PCS provider, thereby enhancing PCS competition.<sup>30</sup>

Despite these clear benefits, the opponents of BellSouth's request raise time-worn claims with no merit, solely for the purpose of delay. None of the commenters opposing BellSouth's request disputes that one-stop shopping serves the public interest, but they nevertheless seek to prevent BellSouth from giving consumers this option simply to avoid competition. The Commission should reject these groundless objections as it has many times before and avoid delaying the consumer benefits of BellSouth's proposal.

The lack of merit in the objections is exemplified by AT&T. AT&T claims that "BellSouth has no in-region PCS customers to provide with wireless services while PCS facilities are being built," since BellSouth "holds no PCS licenses in its local telephone service area."<sup>31</sup> AT&T is wrong. *BellSouth applied for and won only two PCS licenses, and both are in BST's telephone service area.* As a result, BPCI will have PCS customers and BST will have PCS resale customers in BST's telephone service area and will need to provide these customers with cellular service during the PCS

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<sup>29</sup> CMRS Fourth Report and Order, 9 F.C.C.R. at 7125.

<sup>30</sup> Nortel Comments at 3 (footnote omitted).

<sup>31</sup> AT&T Comments at 9 (emphasis in original omitted).

build-out period and beyond. Moreover, after future auctions, BPCI may have PCS customers outside the BST telephone service region. Grant of the Resale Request is needed to provide customers with cellular service to complement their PCS service, due to the fact that BPCI is not structurally separated from BST.<sup>32</sup> Moreover, BST needs to offer its customers resold cellular service in order to provide one-stop shopping, whether or not BellSouth has a PCS license in the market.

Plainly, allowing cellular and PCS to be offered together benefits consumers, as does allowing wireless and wireline service. *Grant of the BellSouth Resale Request will increase competition, increase consumer choice, increase consumer convenience, lower prices, and make wireless service more widely available.* To serve the public interest, BellSouth submits, the Commission should act promptly and grant BellSouth's request.

### III. Interconnection

In a vain attempt to delay relief, several commenters raise meritless claims regarding interconnection issues of a decade ago that have been repeatedly rejected by the Commission. The Commission should reject as baseless these attempts to re-raise stale issues, so that the benefits of BellSouth's resale proposal can flow to consumers.

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<sup>32</sup> AT&T apparently does not understand the cellular structural separation rule. See AT&T Comments at 9 ("in areas where BellSouth does not provide local exchange service, it is not clear why integration of landline and wireless functions is either necessary or desirable for purposes of serving future PCS customers"). In fact, the cellular structural separation rule requires a BOC to use a structurally separated subsidiary for providing cellular service even outside its telephone service area. For example, BellSouth is AT&T's partner in the Los Angeles cellular system through a subsidiary that is structurally separated from BST, even though BST's nearest telephone service area is thousands of miles away and BST has absolutely no potential for cross-subsidization or interconnection abuse.



The FCC has well-established policies governing cellular interconnection that have long assured cellular providers of fair and reasonable interconnection of their systems with the LEC wireline network.<sup>33</sup> These policies have worked so well that the FCC recently extended them to all commercial mobile radio services.<sup>34</sup> In addition, Sections 201 and 202 of the Communications Act, together with new Section 332(c)(1)(B) and the complaint process provided by Section 208, ensure that commercial mobile radio service providers have the ability to obtain fair, reasonable, and nondiscriminatory interconnection.<sup>35</sup> Recently, in deciding to allow LECs to hold SMR licenses, the Commission found that these interconnection policies were sufficient to prevent interconnection discrimination and pointed to the absence of "any pending complaints alleging discriminatory interconnection filed by unaffiliated cellular providers against wireline carriers with cellular affiliates."<sup>36</sup>

In short, the Commission has found that its existing interconnection policies are sufficient to deter discriminatory interconnection even when LECs operate cellular, PCS, or SMR facilities without structural separation. The opposing commenters, however, claim that the possibility of discriminatory interconnection is so great if BellSouth were authorized to *resell* cellular service that the Resale Request should be denied. These comments cannot be taken seriously, given the Commission's finding that the interconnection policies are sufficient even where a LEC provides facilities-based mobile service.

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<sup>33</sup> See *Need to Promote Competition and Efficient Use of Spectrum*, 59 Rad. Reg. 2d (P & F) 1275 (1986), *recon.*, 2 F.C.C.R. 2910 (1987), *further recon.*, 4 F.C.C.R. 2369 (1989).

<sup>34</sup> CMRS *Second Report and Order*, 9 F.C.C.R. at 1497-1501.

<sup>35</sup> 47 U.S.C. §§ 201, 202, 332(c)(1)(B), 208.

<sup>36</sup> *SMR Eligibility*, 10 F.C.C.R. at 6293.

These objections were filed for delay. The Commission should not allow these filings to achieve their anticompetitive objective. The objections lack any credibility. In fact, many of these strident claims conflict squarely with the same parties' prior representations about how well the Commission's interconnection policies work. AT&T, for example, claims (without any factual support) that the Bell Companies "have not acted in good faith in negotiating interconnection deals with their cellular competitors" and that the Bell Companies have "consistently ignored" the Commission's interconnection policies.<sup>37</sup> Just one year ago, however, AT&T found that these policies were working well:

[T]he current process of private, good faith negotiations between cellular service providers and LECs, which result in agreements that govern the terms[,] conditions[,] and charges for interconnection between LECs and cellular carriers appears, for the most part, to be working satisfactorily. This process, for example, appears to afford LECs the flexibility to meet the diverse and evolving needs of CMRS providers.<sup>38</sup>

In a similar vein, McCaw (now AT&T Wireless) noted its satisfaction with the cellular interconnection policies, aided by the Commission's complaint process:

The Commission has relied on its complaint process to ensure that good faith negotiations are conducted between LECs and cellular carriers for establishing interconnection arrangements, and these carriers have indicated that they are satisfied with the current system. The success of this process is further demonstrated by the relatively few complaints received by the Commission in connection with cellular/LEC interconnection arrangements. . . .<sup>39</sup>

In its comments, AT&T provides no explanation for its sudden change in position and cites no evidence that the Commission's interconnection policies have become completely ineffective since

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<sup>37</sup> AT&T Comments at 3, 10. BellSouth notes that the fact that two parties to a negotiation disagree over how to resolve a difficult issue does not indicate that either party has acted in bad faith.

<sup>38</sup> Comments of AT&T, CC Docket 94-54, at 12-13 (Sept. 12, 1994).

<sup>39</sup> Comments of McCaw, CC Docket 94-54, at 24 n.58 (Sept. 12, 1994) (citations omitted).

September 1994.<sup>40</sup> AT&T cites no FCC decisions finding BellSouth in violation of the cellular interconnection policies.

In fact, AT&T's *undated* litany of alleged interconnection abuses at the hands of (mostly unnamed) Bell Companies is simply a recitation of a revisionist history of the early days of cellular, when LECs and cellular carriers were struggling to solve brand-new interconnection issues, before the FCC had provided much guidance.<sup>41</sup> AT&T follows this with a begrudging admission that "most cellular interconnection agreements were finally closed by the early 1990s."<sup>42</sup> AT&T follows this with an irrelevant tirade of interconnection allegations concerning enhanced services. In short, AT&T

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<sup>40</sup> AT&T claims that BST has refused to discuss mutual compensation issues with AT&T and recently "took the position before the Florida Public Service Commission that LECs should not be required to pay compensation" when mobile carriers terminate land-originated calls. AT&T Comments at 12 & n.25. These allegations are incorrect and incomplete. First, BST has taken the position that mutual compensation was inappropriate for *intrastate, local* cellular interconnection rates because it receives no incremental revenue from its flat-rate wireline subscribers for originating a local call and thus has no per-call revenue to share. Two state commissions have specifically agreed with that position (South Carolina in 1989 and Florida in 1988 and again in 1995). The fact that mutual compensation is not addressed is factored into the favorable interconnection rates which cellular carriers have. Moreover, unlike interexchange carriers, cellular carriers pay BST only for the traffic they terminate on BST's wireline network. Finally, BellSouth urged the Florida PSC to address the issue of mutual compensation in connection with a comprehensive analysis of local competition, rather than ad hoc in cellular interconnection cases.

<sup>41</sup> For example, AT&T's claims regarding the pricing of Type 1 and Type 2 interconnection (AT&T Comments at 12 n.24) date back to 1986, prior to the FCC's establishment of cellular interconnection policies. In any event, there was no discrimination involved. Type 1 interconnection was offered, at a flat rate, before Type 2 became available, and Type 1 was used by BMI systems. When superior type 2 interconnection became available, it was offered on a usage-sensitive basis. Other carriers asked for Type 2, even though Type 1 was available to them at the flat rate. Subsequently, Type 1 was moved to usage-sensitive pricing.

The Florida, North Carolina, and South Carolina "litigation" cited by AT&T (AT&T Comments at 11) consisted of Public Service Commission matters from the 1986-88 era generally associated with the Commission's generic proceedings to establish their own respective cellular interconnection policies.

<sup>42</sup> AT&T Comments at 12.

is apparently willing to say virtually anything, including contradict its previous representations to the FCC, to forestall competition.<sup>43</sup>

Nextel claims that “[e]ven as a reseller of cellular service, BellSouth is incented to discriminate in its interconnection policies against other service policies” and that “joint offerings [of cellular and wireline service] present new reasons to discriminate against those who sell unbundled services.”<sup>44</sup> Just last October, however, Nextel saw no need for structural separation when it argued that LECs “should be permitted to own and operate SMR systems”:

... [T]he influx of wireline capital into SMR systems could provide economies of scale and needed financial investment in the developing wireless industry. . . . This could potentially speed the development of wireless services, resulting in more rapid deployment of enhanced telecommunications services and a more competitive CMRS market.

... [T]he wireline prohibition is no longer necessary in light of the existing safeguards to prevent anti-competitive behavior by wireline companies. Not only are wireline companies prohibited from engaging in discriminatory behavior by Sections 201 and 202 of the Communications Act, but they are also specifically subject to mandatory interconnection obligations by the Commission’s Second Report and Order. In establishing the CMRS regulatory framework, the Commission required that local exchange carriers (“LECs”) provide interconnection to all CMRS providers upon reasonable request. . . .<sup>45</sup>

Nextel points to nothing occurring since last October that indicates any basis for concluding that the existing safeguards and interconnection policies have suddenly become inadequate—and certainly

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<sup>43</sup> AT&T also repeatedly intones its time-worn mantra about the Bell Companies’ “monopoly bottleneck” and uses this to request that the Resale Request be denied. AT&T Comments at 6-7, 9. The Commission has already repeatedly confronted the issue of LEC entry into competitive businesses, including wireless services.

<sup>44</sup> Nextel Comments at 13.

<sup>45</sup> Comments of Nextel Communications, Inc., GN Docket 94-90, at 4, 5-6 (Oct. 5, 1994)(footnotes omitted).

provides no basis for greater concern about interconnection abuse in connection with BellSouth's cellular resale than in facilities-based SMR service. Moreover, in the PCS docket, Nextel had no objection to LEC operation of PCS *or cellular* facilities without structural separation.<sup>46</sup> Its comments are thus not worthy of serious consideration.<sup>47</sup>

Sprint, a LEC exempt from the structural separation requirement for its cellular operations, turns logic on its head when it claims that the fact that BellSouth has negotiated standard interconnection arrangements and filed them with state regulatory authorities<sup>48</sup> *is itself a form of discrimination*, because these arrangements (providing for Type 1 and Type 2 interconnection) discriminate against those who need other forms of interconnection.<sup>49</sup> Apparently Sprint believes that offering services to all on negotiated, standardized, equal terms is as discriminatory as *not* offering services to all on the same terms. Sprint cites no authority for this remarkable proposition, which appears to contradict the very principles of Title II of the Act. Moreover, Sprint's argument is purely about the alleged anticompetitive potential of LECs in general, and not BellSouth or even Bell Companies in particular.<sup>50</sup> Thus, its claim is irrelevant to BellSouth's request.

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<sup>46</sup> See note 63, *infra*.

<sup>47</sup> Nextel also claims that standard interconnection contracts or tariffs are not specific enough to enable ready detection of discriminatory policies, on the ground that such filings may not include all relevant terms. Nextel Comments at 14. Nextel's generic objection does not purport to refer to BellSouth's standard interconnection contracts and tariffs, however, and can be disregarded because the issue before the Commission is BellSouth's Resale Request, not a generic issue.

<sup>48</sup> BellSouth has filed tariffs setting forth the standard, negotiated prices, terms and conditions for interconnection in eight states. In the one remaining state, North Carolina, its standard, negotiated interconnection agreement has been approved by the state commission.

<sup>49</sup> Sprint Comments at 4.

<sup>50</sup> If nothing else, Sprint's filing calls into question whether it, as a LEC, offers all cellular carriers the same interconnection arrangements that it offers its own cellular operations.

In any event, BellSouth wishes to make clear that it is always willing to engage in good faith negotiations with mobile carriers concerning forms of interconnection not addressed in its standard interconnection arrangements. Once agreement is reached, the new arrangements will be made available to others on the same basis.

MCI claims that the Commission's interconnection policies are not adequate to prevent discriminatory interconnection in the absence of structural separation because those interconnection policies were adopted in the same orders that found structural separation necessary.<sup>51</sup> In the decisions adopting the cellular structural separation requirement, the Commission also adopted only the most general portions of its cellular interconnection policies, since most of the issues were yet to be framed when the cellular industry was not yet operational. Years later, the Commission adopted a series of increasingly detailed decisions setting forth its evolving cellular interconnection policies.<sup>52</sup> Those policies were not founded on the existence of structural separation, and the recently-adopted CMRS interconnection policy<sup>53</sup> similarly was not based on structural separation. In fact, the Commission has found that these interconnection policies are sufficient to guard against discriminatory interconnection practices even where the LEC is directly licensed as a CMRS provider.<sup>54</sup> If the Commission held the safeguards sufficient in the facilities-based environment, then, *a fortiori*, it should rule the same way in the resale environment. Thus, MCI's arguments are completely without merit.

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<sup>51</sup> MCI Comments at 10, citing *Cellular Communications Systems*, CC Docket 79-318, *Report and Order*, 86 F.C.C.2d 469, 496 (1981), *recon.*, 89 F.C.C.2d 58, 72 (1982) (further subsequent history omitted).

<sup>52</sup> See note 33, *supra*.

<sup>53</sup> See note 34, *supra*.

<sup>54</sup> *SMR Eligibility*, 10 F.C.C.R. at 6293.

In any event, the Commission has already resolved the issue of interconnection. It has repeatedly and recently held that its interconnection policies are adequate and sufficient to deter interconnection abuse, even when LECs are facilities-based mobile service providers. It is nothing short of amazing that the opposing commenters nevertheless claim that these policies are incapable of deterring interconnection abuse by BST when it functions merely as a *reseller* of cellular service. Simply put, authorization of structurally unseparated cellular resale poses no danger whatever of discriminatory interconnection.<sup>55</sup>

#### IV. Cross-Subsidization

The opposing commenters fail to raise any claims regarding alleged cross-subsidies that have not previously been considered and rejected by the Commission. The Commission has found in its PCS and SMR rulemakings that nonstructural safeguards are adequate to prevent such cross-subsidies and has allowed LECs to provide these wireless services directly. The opposing commenters have not shown any greater danger of cross-subsidy in the case of resold cellular service, and, in fact, the likelihood is far less. Thus, the opposing commenters' claims are simply without merit.

The Wireless Resellers correctly note that facilities-based cellular service is sufficiently profitable that the need for the LEC to cross-subsidize it "is now nonexistent."<sup>56</sup> BellSouth has no earthly reason to attempt to use BST's resale of cellular service somehow to subsidize its cellular

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<sup>55</sup> If the commenters were to be believed, the Commission would have to find that its interconnection policies are totally ineffectual, and neither competitors nor regulators have any ability to detect or deter interconnection discrimination.

<sup>56</sup> Resellers Comments at 3.

operations, which are profitable. The only issue, therefore, is whether BST will be likely to subsidize its own resale of cellular service.

The simple answer is that BST will have no meaningful opportunity or incentive to engage in such cross-subsidization, and non-structural safeguards are sufficient to deter any cross-subsidization that could possibly occur, just as the Commission has found to be true for PCS and SMR. There are few *opportunities* to cross-subsidize cellular resale, given that the principal input is cellular service purchased at the same market price available to others. Similarly, a LEC has virtually no *incentive* to engage in cross-subsidization of cellular resale because its cellular resale business will be dwarfed by its wireline exchange business. BST will be reselling cellular service as a convenience to its customers and to remain competitive; it has no incentive to use anticompetitive tactics to dominate a business that is at best a side line.

#### **A. The Opposing Commenters' Prior Positions**

The most vocal opponents of BellSouth's Resale Request found no need for structural separation to ward off potential cross-subsidization when the Commission allowed LECs to provide PCS. They neither explain nor acknowledge their change of position, suggesting that these parties will say virtually anything to the FCC to achieve their goal of blocking BellSouth from competing to meet consumers' needs.

In the PCS docket, the Commission made LECs eligible to provide PCS directly, stating that "no new separate subsidiary requirements are necessary for LECs (including BOCs) that provide PCS."<sup>57</sup> Although the Commission had considered requiring LECs to file non-structural safeguard plans before providing PCS, it found that the concerns about the potential for cross-subsidies did not

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<sup>57</sup> *PCS Second Report and Order*, 8 F.C.C.R. at 7751.



even justify "imposing additional cost-accounting rules on LECs that provide PCS service."<sup>58</sup> In other words, existing nonstructural safeguards were an adequate protective measure to prevent cross-subsidization of wireless service.

Those now opposing BellSouth's request voiced no concern about LEC cross-subsidization of wireless service in the PCS docket, did not urge adoption of structural separation, and did not oppose elimination of the cellular structural separation rule. Indeed, Sprint said that except for the cellular-PCS spectrum limits, "[n]o other restrictions are warranted" on LEC eligibility and argued that this would "benefit consumers by allowing LECs to develop innovative and lower cost services."<sup>59</sup> Furthermore, Sprint advocated that "LECs should be permitted the same flexibility as other potential PCS providers to develop a wide range of diverse PCS applications, offering innovative new possibilities in the local exchange."<sup>60</sup> Sprint characterized concerns about LEC cross-subsidization as "speculat[ion]" and said that "[t]o the extent the Commission has any competitive concerns regarding the provision of PCS by LECs, it can apply non-structural safeguards, as necessary. . . . The best balance for the Commission to strike is one that permits LECs to incorporate innovative personal communications service technologies with local service provision."<sup>61</sup> Sprint has now turned 180 degrees from that position without acknowledgment or explanation, perhaps because it is spinning off its cellular operations.<sup>62</sup> In consequence, the Commission can give no credence to

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<sup>58</sup> *Id.* at 7752.

<sup>59</sup> Comments of Sprint, GN Docket 90-314, at 13 (Nov. 9, 1992) ("Sprint PCS Comments").

<sup>60</sup> *Id.*

<sup>61</sup> Reply Comments of Sprint, GN Docket 90-314, at 13-14 & n.27 (Jan. 8, 1993) ("Sprint PCS Reply Comments").

<sup>62</sup> Nevertheless, BellSouth notes that all of Sprint's arguments concerning the hypothetical potential for LEC cross-subsidization of cellular resale are equally applicable to its own provision of PCS service without structural separation.

Sprint's speculative assertions here. Similarly, the Commission should discount the newfound concern of AT&T, Nextel, and MCI, who saw no reason for imposing structural separation on LEC PCS operations.<sup>63</sup>

Sprint, AT&T, Nextel, and MCI did not raise cross-subsidization as a problem just two years ago, when the Commission was conducting a rulemaking to examine this very issue. Now, without explanation, they cry out in alarm. They offer no evidence for their concern, but nevertheless claim that the danger of cross-subsidization is too great to allow BellSouth to resell cellular service without structural separation and argue that a rulemaking is needed to examine the issue. They provide no basis for concluding that cellular resale will in any way increase the incentives or ability of BellSouth to engage in cross-subsidization. Such claims have been rejected before and should be summarily dismissed here.

#### **B. Speculative Cross-Subsidization Claims**

Some commenters opposing BellSouth's request merely speculate as to how resale could facilitate cross-subsidy, while others outright assume it will occur. In all cases, the opposing parties fail to raise substantial and material factual questions of fact. Without evidence of a strong likelihood

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<sup>63</sup> See Comments of McCaw Cellular Communications, Inc., GN Docket 90-314, at 33-34 (Nov. 9, 1992) ("McCaw PCS Comments"); Reply Comments of McCaw Cellular Communications, Inc., GN Docket 90-314, at 34-43 (Jan. 8, 1993) ("McCaw PCS Reply Comments"); AT&T Comments, GN Docket 90-314 (Nov. 9, 1992) ("AT&T PCS Comments"); AT&T Reply Comments, GN Docket 90-314 (Jan. 8, 1993) ("AT&T PCS Reply Comments"); Comments of Fleet Call, Inc., GN Docket 90-314 (Nov. 9, 1992) ("Fleet Call PCS Comments"); Reply Comments of Fleet Call, Inc., GN Docket 90-314 (Jan. 8, 1993) ("Fleet Call PCS Reply Comments"); MCI Comments, GN Docket 90-314, at 17 (Nov. 9, 1992) ("MCI PCS Comments"); MCI Reply Comments, GN Docket 90-314, at 47 (Jan. 8, 1993) ("MCI PCS Reply Comments"); see also McCaw PCS Comments at 47 (elimination of cellular structural separation rule "is meaningless to McCaw and all other non-[Bell] cellular carriers.").

that BellSouth will engage in anticompetitive conduct, further inquiry is unnecessary.<sup>64</sup> Accordingly, these objections should be summarily dismissed. In the Appendix, BellSouth addresses the utter lack of merit in these speculative allegations.

### C. Non-Structural Safeguards are Adequate

As discussed above, the Commission and the courts have repeatedly found that its existing non-structural safeguards are sufficient to protect against cross-subsidization when LECs provide *facilities based* wireless services such as PCS and SMR service on a structurally unseparated basis. Cellular *resale* provides no greater opportunities or incentives for cross-subsidization than exist in facilities-based PCS or SMR service. Accordingly, the same non-structural safeguards are equally adequate here.

The commenters do not attempt to show that there is a *greater* danger of cross-subsidy when a LEC *resells* wireless service than when it provides facilities-based wireless service directly. Instead, they attack the very efficacy of the Commission's nonstructural safeguards themselves.<sup>65</sup> Those safeguards are not at issue here, however, given that the Commission has repeatedly held that they are adequate. Moreover, the Court of Appeals has confirmed that the FCC, by adopting a variety of nonstructural safeguards, including joint cost rules, cost allocation manuals, annual independent audits, ARMIS reporting requirements, on-site FCC audits, price caps, and cost accounting rules has "demonstrated that the [Bell Companies'] incentive and ability to cross-subsidize will be significantly reduced."<sup>66</sup> Under these circumstances, there is no conceivable reason why the nonstructural

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<sup>64</sup> *Pacific Telesis Mobile Services*, DA 95-1413, ¶ 13 (W.T.B. June 23, 1995)

<sup>65</sup> *See, e.g.*, Sprint Comments at 2-4; MCI Comments at 9.

<sup>66</sup> *California v. FCC*, 39 F.3d 919, 926 (9th Cir. 1994), *cert. denied*, 115 S.Ct. 1427 (1995); *see United States v. Western Electric Co.*, 993 F.2d 1572, 1580 (D.C. Cir.), *cert. denied*, 114 S.Ct. 487 (1993).

safeguards that the Commission found adequate to prevent cross-subsidization of PCS and SMR service should not be more than adequate in the cellular resale field as well. BellSouth notes that there is an unresolved issue as to whether common carrier mobile services should be classified as "regulated" or "unregulated" for purposes of the cost allocation and accounting rules in Parts 32 and 64.<sup>67</sup> BellSouth will follow whatever decision the Commission reaches with respect to this issue.

Nextel has questioned whether BST plans to "bundle" cellular service and mobile CPE. The Commission has held that offering customers the option of acquiring CPE in a package deal with cellular service serves the public interest.<sup>68</sup> Consistent with this cellular "bundling" policy, which appears to be fully applicable to LECs acting as resellers, BST plans to offer its customers resold cellular service alone or in package deals with CPE, as is the standard practice in the cellular industry.<sup>69</sup>

In discussions with FCC staff, the issue of Customer Proprietary Network Information ("CPNI") has arisen. One of the principal purposes of BellSouth's Resale Request is to give customers a single point of contact for a variety of telecommunications services. On several occasions, the Commission has found that prohibiting AT&T from using CPNI to achieve a similar

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<sup>67</sup> Cellular service has been previously considered a regulated service, since it is a common carrier service subject to Title II of the Communications Act. See *Separation of Costs*, CC Docket 86-111, 2 F.C.C.R. 1298, 1307 (1987) (subsequent history omitted). In the *CMRS Second Report and Order*, however, the Commission appeared to view common carrier mobile services as unregulated, *CMRS Second Report and Order*, 8 F.C.C.R. at 1492, and in *SMR Eligibility* the Commission stated that activities that have never been subject to rate regulation were deemed unregulated, see *SMR Eligibility*, 10 F.C.C.R. at 6293. In *Pacific Telesis Mobile Services*, DA 95-1413, ¶ 11, the staff indicated that the issue of whether CMRS services should be treated as regulated or unregulated has been raised in a petition for reconsideration of the *CMRS Second Report and Order* and will be resolved in that proceeding.

<sup>68</sup> *Bundling of Cellular Customer Premises Equipment and Cellular Service*, CC Docket No. 91-34, Report and Order, 7 F.C.C.R. 4028 (1992).

<sup>69</sup> Any services or products not offered directly by BST will be made available to customers only in full compliance with any applicable Commission rules or safeguards.

objective would be contrary to the public interest.<sup>70</sup> Accordingly, the Commission has applied to AT&T's cellular services personnel the same CPNI rules that apply to CPE and enhanced services. BellSouth likewise proposes that the CPE/enhanced services CPNI rules should apply to its resale of cellular services.<sup>71</sup>

## CONCLUSION

The consumer commenters strongly supported BellSouth's Resale Request because it will unquestionably lead to broader choices and more competitive prices for consumers.

The opposing parties could muster no facts to support their tirade against BellSouth's structurally unseparated cellular resale proposal, resorting instead to a speculative jeremiad of hypothetical anticompetitive effects. In the last two years, however, these same commenters supported the entry of LECs into a variety of wireless services without structural separation, relying on nonstructural safeguards.

Implicit in the opponents' hysterical attacks on BellSouth's proposal are the unspoken and invalid assumptions that: (a) the FCC's nonstructural safeguards are totally ineffectual; (b) BellSouth will wantonly cross-subsidize cellular resale and discriminate in its interconnection practices in violation of state and federal laws and regulation; (c) BellSouth's competitors will be oblivious to below-cost resale and discriminatory interconnection or be afraid to complain to regulatory authorities; and (d) the FCC and state regulators will be incapable of detecting or deterring BellSouth's behavior. This is arrant nonsense.

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<sup>70</sup> *Craig O. McCaw*, 9 F.C.C.R. at 5885-86, citing *AT&T CPE Order*, 102 F.C.C.2d 627, 693 (1985).


<sup>71</sup> BellSouth notes that BMI does not currently receive CPNI from BST. That will not change, if the Resale Request is granted.

These commenters clearly filed their objections to BellSouth's proposal for the purpose of forestalling competition. The Commission should not countenance such filings. It should grant BellSouth's Resale Request expeditiously to serve the public interest.

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## **APPENDIX: SPECULATIVE CROSS-SUBSIDY ARGUMENTS**

As discussed in the body of BellSouth's reply, the comments are purely speculative regarding the likelihood of cross-subsidy. No response should be necessary to these baseless filings, particularly since the Commission has made clear that nonstructural safeguards are adequate to deter improper cross-subsidization. Out of an abundance of caution, however, BellSouth takes this opportunity to show the total lack of worth in these arguments.

AT&T speculates that BST could, "without detection, price retail cellular offerings below cost and subsidize the loss through its already excessive rates for LEC-to-CMRS interconnection."<sup>72</sup> Below-cost retail cellular offerings are hardly possible "without detection," however. Retail cellular prices are readily available—indeed, they are commonly advertised—and competing cellular providers are very familiar with the cost of service. Any BST retail offering even arguably below cost would be instantly detected (if not by competing cellular providers, by BMI's partners<sup>73</sup>) and brought to the attention of regulators, if not the courts.

AT&T then hypothesizes that BST could accomplish below-cost resale through "exclusive volume-based interconnection arrangements between [BST] and its cellular affiliate in exchange for

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<sup>72</sup> AT&T Comments at 7. If true, this would be equally true for PCS, but AT&T did not raise it in the PCS rulemaking. BellSouth notes that AT&T offers no support for its allegation that the rates for LEC-to-CMRS interconnection that BellSouth has negotiated with AT&T and others are "already excessive." AT&T is apparently engaging in hyperbole, describing any rate higher than it wants to pay as "excessive." BellSouth cautions the Commission that no finding has been made that these rates are excessive in any legal sense. In fact, the Florida Public Service Commission voted on September 12, 1995, to apply existing rates for Type 1 and 2A interconnection unless the parties negotiate an alternative.

<sup>73</sup> Many of BMI's cellular interests are held in the form of partnership interests. BMI's partners would undoubtedly view below-cost retailing of cellular service by BST as a violation of BellSouth's fiduciary duty to the partners. Accordingly, BellSouth has no incentive to engage in such activity.

capacity on the cellular system.<sup>74</sup> This fantastic scheme would, of course, eliminate the alleged source of cross-subsidy, because BST would no longer have allegedly "excessive" interconnection rates to serve as a source of subsidy for its below-cost offering on the retail side. Moreover, interconnection arrangements offered by BST cannot be "exclusive," since BST is obliged to make the same arrangements with others on a non-discriminatory basis.<sup>75</sup> BST has no conceivable reason to price both cellular interconnection and cellular resale below cost, as AT&T suggests.

MCI speculates that cross-subsidies could occur through transfers of trained personnel, joint marketing, or "the exploitation of the BOC's monopoly-derived goodwill."<sup>76</sup> In point of fact, BellSouth's Resale Request does not contemplate or permit any personnel transfers between BST and BMI, nor does it contemplate sales or promotion by BST on behalf of BMI.<sup>77</sup> Using BellSouth's good name in marketing a product hardly constitutes prohibited cross-subsidization—the Commission specifically endorsed AT&T's doing so in approving the AT&T acquisition of McCaw, despite the fact that the AT&T brand name is a valuable marketing asset.<sup>78</sup>

Several commenters simply assume that BellSouth (or any LEC providing cellular service, for that matter) will cross-subsidize cellular resale. For example, the Wireless Resellers assume that BellSouth will "cross-subsidize its cellular resale operation in an effort to gain a foothold for CMRS services like PCS service or paging" simply because "there are no guaranteed profit margins in

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<sup>74</sup> AT&T Comments at 8.

<sup>75</sup> 47 U.S.C. §§ 201(b), 202(a).

<sup>76</sup> MCI Comments at 11; *accord* Nextel Comments at 12-13 (personnel shifts).

<sup>77</sup> The costs of training BST personnel in the resale of cellular service will be allocated to cellular resale in accordance with existing FCC cost allocation and accounting procedures; similarly, any marketing by BST that involves both wireline and resold cellular service will also be allocated in accordance with FCC procedures.

<sup>78</sup> See *Craig O. McCaw*, 9 F.C.C.R. at 5871.



resale.”<sup>79</sup> Airlink assumes that if wireless services become substitutable for wireline service, BellSouth will attempt to retain wireline customers by reselling cellular service “at prices that *may* be subsidized.”<sup>80</sup> MCI similarly assumes that cross-subsidization will occur.<sup>81</sup>

Sprint takes its assumptions even farther. First, it speculates that BellSouth will cross-subsidize its resale of cellular service by allocating “[w]hat would have been overearnings at the local level” to the resale of cellular service at “less than market returns or losses on cellular sales, thus reducing local earnings.”<sup>82</sup> To accomplish this, Sprint assumes that BST would hide its “cellular sales costs and actual losses” by bundling cellular and local exchange offerings.<sup>83</sup> In so doing, it ignores any effect of nonstructural safeguards, as well as any effective regulatory oversight at the state or federal level. To complete its imputation of evil intentions to BellSouth, Sprint also hypothesizes that BST might also “attempt to misallocate common expense categories to local exchange rather than to resold cellular operations.”<sup>84</sup> Having thus assumed the existence of no effective regulatory oversight, no non-structural safeguards, and intentional misallocation of costs by BST in order to cross-subsidize cellular resale, Sprint unsurprisingly concludes that BST “could easily subsidize”

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<sup>79</sup> Resellers Comments at 3.

<sup>80</sup> Airlink Comments at 3 (emphasis added).

<sup>81</sup> MCI Comments at 8-9. Radiofone alleges in its Comments that it has “suffered anticompetitive practices at the hands of BellSouth,” citing *Baton Rouge MSA Limited Partnership*, 8 F.C.C.R. 2889 (1993). Radiofone Comments at 2-3. That case involved no anticompetitive practices. Rather, it involved whether a particular condition should be imposed on a radio license. BellSouth was unwilling to accept the license with a condition requiring it to provide service to Radiofone’s customers in an area BellSouth did not intend to serve. Radiofone also cites pending complaint proceedings that are unresolved, as well as materials concerning enhanced services and exchange access service pricing. *Id.* These are plainly irrelevant.

<sup>82</sup> Sprint Comments at 2.

<sup>83</sup> *Id.*

<sup>84</sup> *Id.* at 3.